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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter of Policies
and Rules Concerning Toll
Fraud.

CC Docket No. 93-292

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COMMENTS OF FLORIDA PAY TELEPHONE ASSOCIATION, INC.

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COMMENTS OF FLORIDA PAY TELEPHONE ASSOCIATION, INC.

Florida Pay Telephone Association, Inc. ("FPTA") submits the following comments in response to and in support of the Notice of Proposed Rulemaking ("Notice"), FCC 93-496, released on December 2, 1993 by the Federal Communications Commission ("FCC") in the above captioned proceedings.

I. SUMMARY OF COMMENTS

The proposed adoption of the Florida Payphone toll fraud rule as proposed, without any further modifications, would allocate liability for payphone toll fraud on the basis of responsibility. This is a fair and reasonable approach in the public interest, as it provides real incentives for a comprehensive deployment of fraud prevention actions. First, the proposed rule is premised upon competitive pay telephone service providers purchasing all available local exchange company ("LEC") screening and blocking. Second the rule helps ensure that such LEC screening and blocking is properly designed and implemented. Third, it helps ensure that all LEC and long distance carrier operators look for and rely upon the screening information. Only when such practices fail does the rule come into play to allocate liability with responsibility.

The Florida experience is especially valuable as in the nearly one year period in which the Florida rule has been in effect there

have been no civil or administrative proceedings disputing fraudulent toll calls at pay telephones. The rule as proposed in the notice would provide a uniform, consistent policy that is superior to individual carrier tariff changes. Adoption of the rule as proposed would provide clear lines of responsibility and refocus carriers on fraud detection and prevention activities and stem the tide of wasteful litigation.

II. INTRODUCTION

The Florida Pay Telephone Association, Inc. ("FPTA"), is a non-profit Florida corporation whose members include non-local exchange company ("non-LEC") or competitive pay telephone service providers, vendors of pay telephone equipment and services, operator services providers ("OSPs"), and others interested in advancing the objectives of the FPTA. The FPTA's members represent approximately 21,400 of the 32,000 non-LEC pay telephones operating in Florida.

The members of the FPTA are dedicated to promoting high quality, low cost, widely available public payphone service to consumers within Florida and establishing a regulatory environment in which competitive pay telephone service can bring these benefits to the public. Consistent with these objectives, the FPTA has a code of ethics within its articles of incorporation and sponsors various educational and training programs on such issues as state and federal regulatory requirements. In addition, through the FPTA the individual members are able to pool their limited resources for more meaningful participation through a single voice in proceedings

such as these.

The FPTA actively participated in the proceedings conducted by the Florida Public Service Commission ("FPSC") that led to the adoption of the Florida fraud rule that is the subject of the instant Notice.¹ Further, in the belief that the Florida fraud rule was an effective and positive means of dealing with fraudulent pay telephone calls, the FPTA sought and supported the FPSC's petition to this Commission to seek the FCC's adoption of the Florida fraud rule.

Based upon the underlying Florida proceedings, the proceedings to date in this matter, and the success of the Florida fraud rule, the FPTA strongly endorses and encourages the FCC to adopt the Florida fraud rule without any modifications. Adoption of the rule will not solve the toll fraud problem. But such a rule, in concert with other equipment and carrier services will make a significant contribution to helping to eliminate toll fraud and the disputes and litigation that occur as a result of such fraud.

Because of the interest and experience of the FPTA's members, the FPTA shall provide some overview comments regarding the general subject of toll fraud and then provide only specific responses to the payphone fraud issues raised in paragraphs 27 through 31 of the Notice. Accordingly, at this time the FPTA will not specifically address the Notice's inquiries with respect to PBX fraud, cellular fraud, line information database (LIDB) fraud, and the equipment

¹The Florida fraud rule is codified as Rule 25-22.515(17), Florida Administrative Code, and discussed in Paragraph 27 of the Notice.

manufacturers' issues.

III. COMMENTS

1. The Proposed Rule Helps to Preclude Payphone Fraud

The issues of toll fraud at competitive pay telephones are complex, but the Florida rule provides a simple, effective means of correlating liability to responsibility.

As a starting point, the FPTA notes that with respect to those competitive pay telephone providers who use "smart" pay telephones, most all such instruments provide for the ability to program the blocking of certain types of calls. For example, 10XXX+1 calls are blocked by programming the instrument. If these calls were not blocked, then charges would be billed to the pay telephone line without the instrument collecting any charges from the caller.²

Instrument blocking is effective for blocking certain types of calls, but it is ineffective if an end user illegally taps into the payphone access line³ and irrelevant for certain kinds of incoming, outgoing, or third party billed calls. To address these issues, the LECs offer various screening and blocking services, which

²Some LECs are now offering or developing "coin line" services which enable "dumb" phones to be connected to an access line that is comparable to the line utilized by the LECs for their own pay telephones. In the case of coin line instruments, the LEC central office provides the screening, blocking, and other services necessary to the operation of the instrument.

³In the early days of competitive pay telephone service in Florida, the ability to tap into the pay telephone access line was significantly easier due to the LECs' placement of access lines and network equipment in easily reachable locations and the failure to use a secure network interface. Most of these problems have been resolved with new procedures and equipment, but it is impossible to completely protect the access line, protector, and other equipment from unauthorized taps.

include, but may not be limited to, the operator line screening ("OLS") and billed number screening ("BNS") addressed in the Notice and the Florida fraud rule. These services are generally tariffed by the LECs and purchased by the competitive pay telephone providers.

These LEC screening and blocking services should effectively stop fraudulent calls, but unfortunately they do not. Sometimes, the screening and blocking fails. Sometimes the OLS or BNS information is either not delivered by the LEC or IXC to its operator position or otherwise overlooked or ignored by the operator. It is in this void that the Florida fraud rules seek to assign responsibility for when such calls are completed and billed to the competitive pay telephone service providers. Clearly, when such fraudulent toll calls are made and the applicable screening and blocking has been purchased by the competitive pay telephone provider, the competitive pay telephone provider should not be responsible for failures in the LEC or IXC services. The FPTA agrees with those comments on this point that already are of record.⁴

Those who have opposed the Florida fraud rule miss the point with their comments.⁵ Fraud prevention certainly should be, and is, everyone's goal, and it is being addressed at many different levels. The problem the proposed fraud rule attempts to deal with, however, is what occurs after the fraud prevention efforts fail.

⁴See paragraphs 28 and 29 of the Notice.

⁵See paragraph 30 of the Notice.

The proposed rule provides a very real economic incentive to the competitive pay telephone providers to buy screening and blocking, to the LECs to ensure that the screening and blocking works, and to the LECs and IXCs to ensure that their operators recognize and act upon such screening information. Given the underlying cost information for such screening and blocking, which is further discussed below, the prospect of absorbing what can amount to tens of thousands of dollars of fraudulent calls in one month is a powerful incentive to make the services work as designed. Moreover, the LECs seem capable of making the screening and blocking work in their pay telephones, and the competitive pay telephone service providers certainly should not be receiving an inferior grade of service.

As for whether there should be any modifications in the proposed rule, the Florida rule language needs no further changes. It has been suggested that because the United Artists decision, discussed in paragraph 9 of the Notice, relied upon the fact that the payphone providers had selected the "no PIC" option and not presubscribed a 1+ carrier, inclusion of such a requirement in the proposed rule is appropriate. However, such a modification is unnecessary and irrelevant. First, the 1+ carrier may offer its own package of screening and blocking services. Second, and more directly, IXC presubscription does not relate to the failure of LEC screening and blocking to function properly or the failure of an operator to act upon screening and blocking information. The proposed rule allocates liability on the basis of responsibility.

The designation of a 1+ carrier simply does not relate to the objectives to be accomplished by the rule -- if screening and blocking is bought, the responsibility for fraud shifts to the LEC or IXC depending upon how the screening and blocking has failed.

2. The Florida Fraud Rule Works.

As the Notice reflects in paragraph 27, the Florida fraud rule has been in effect less than one year, so absolute conclusions regarding its effectiveness or efficiency may be limited. However, based upon the information available to the FPTA, no litigation or other proceedings have been initiated at the FPSC or in any Florida court and no IXC or LEC has sought to collect from a competitive pay telephone providers charges resulting from such fraudulent calls.⁶

Whether eleven months is a meaningful period, the FPTA notes that given the overall call volumes in Florida and past problems prior to the adoption of the rule, the lack of fraudulent calls and related billing disputes shows that the rule does work. Again, the rule assigns liability coincident with responsibility. Such a system is fair, just, and in the public interest.

3. Adoption of the Proposed Rule Should Replace Conflicting Tariff Language.

The Notice seeks comments on whether carriers should be required to modify existing tariff language limiting carrier liability for fraud and the impact of such modifications on

⁶As the FPTA further discusses below, screening and blocking services must be bought from the LECs for each and every payphone access line.

carriers and the competitive pay telephone providers. The FPTA believes that the FCC's adoption of the Florida fraud rule would, as a matter of law, supersede any carrier tariff language to the contrary. However, for clarity and uniformity all carriers should be required to specifically cross-reference the rule as an exception to any tariff limitations of liability.

The FPTA does not endorse simply a modification of LEC and IXC tariff language in lieu of a rule promulgated by the FCC. The policy proposed by rule in the Notice by its terms affects multiple entities each with different roles. As such, a uniform, consistent policy is vital to put all carriers on clear notice as to their respective rights and obligations. In the FPTA's experience, carrier limitation of liability provisions are not consistent from one carrier to the next. In order to preclude future controversy and litigation the easiest and best approach to this problem is for the FCC to adopt the proposed rule and require carriers to cross-reference it as an exception to any tariffed limitation of liability provisions.

4. Universal, Mandatory LEC Screening and Blocking Plays a Significant Role in Preventing Payphone Fraud.

LEC screening and blocking services are an essential element in the formula to prevent payphone fraud. The Florida experience in this area is particularly instructive because screening and blocking services are universally available and mandatory.

- a. LEC Screening and Blocking is Universally Available and Mandatory in Florida.

From the introduction of payphone competition in Florida in 1985, screening and blocking services have been a fundamental component of the interconnection services made available by the Florida LECs. As the Florida PSC stated in its initial order approving competitive payphone service:

the LECs will be required to provide "billed number screening" where the capability to provide it exists.... In the past, pay telephones were assigned to specific numbers so that operators could screen and block collect and third-party calls from being billed to those numbers. With the advent of new technology, billed number screening can now be provided to any customer requesting it in areas where the new technology is in place.

Order No. 14132, at 11 (Feb. 27, 1985)

Awareness of the importance of screening and blocking services in Florida have increased over time leading to necessary improvements. First as new telecommunications services have become available, the scope of the screening and blocking services have been expanded to include services such as 976 and 1+900. Second, in 1988 the FPTA entered into a Stipulation with the four major Florida LECs that required all Florida non-LEC payphone providers to purchase from the LECs minimum call screening and blocking features -- up to that time screening and blocking were optional services. This requirement was approved by the FPSC and ultimately made a mandatory LEC service that must be subscribed to for each pay telephone line in Florida.⁷ Today, Florida payphone providers can choose from a variety of different combinations of screening

⁷FPSC Order No. 20129 (Oct. 6, 1988).

and blocking services to meet the mandatory purchase requirement, but at a minimum the following LEC screening and blocking services must be installed on each and every pay telephone line: billed number screening, operator line screening, and international call blocking.

b. LEC Screening and Blocking is
Unreasonably Priced in Florida.

The limited cost data made available in Florida demonstrates that screening and blocking services have been priced far in excess of their costs, as such costs are defined by the LECs. For instance, Southern Bell data submitted in FPSC Docket No. 920255-TL reflects that operator line screening costs \$.42 a month and international call blocking costs \$.37 a month, the tariff rate for these two services is \$2.00 per line per month.

Given the important role LEC screening and blocking plays to the prevention of payphone fraud, such services should not be priced above their costs. Screening and blocking services protect the payphone providers, the LECs, connecting carriers, and all other telecommunications services providers. As such, screening and blocking ultimately protects the network, universal service, and all consumers of the network telephone service. Pricing this service above cost is simply contrary to the public interest.⁸

⁸At the time of the submission of these comments, the FPTA notes that the FPTA and Southern Bell have negotiated a proposal to eliminate the separate charges for screening and blocking and to incorporate such service within the scope of the existing line charges. This agreement is subject to FPSC approval, with consideration of this proposal to occur January 18, 1994. Approval of this agreement is a positive development for competitive pay telephone providers in Florida and the overall public interest.

c. LEC Screening and Blocking is
Universally Utilized in Florida.

As discussed in subparagraph (a) above, since 1988 LEC screening and blocking has been a mandatory service requirement for each pay telephone service line in Florida. While there are different screening and blocking options that are bundled into different service packages, competitive pay telephone service providers in Florida must purchase one of the screening and blocking packages for each pay telephone line. Thus, 100% of the pay telephone lines in Florida have at least the basic LEC screening and blocking services.

d. LEC Screening and Blocking is Not
Completely Effective at Preventing
Fraud.

In the Florida experience of the FPTA's members, LEC screening and blocking has not proven to be a completely effective solution to toll fraud. The first problem with LEC screening and blocking is the fact that sometimes it either fails to work or the operator handling the call fails to act on the basis of the screening information. The FPTA has no specific data with respect to the frequency of either the failure of screening and blocking to function properly as engineered versus an operator not acting pursuant to such information. However, based upon the experience of the FPTA's members and the other testimony and evidence submitted in this matter, both types of problems occur.

The second problem involves the scope of such screening and blocking. The best example in Florida has been the controversy surrounding "international call blocking." The blocking of direct

dialed calls to non-domestic (non-United States) terminating points has played an important role in fraud prevention. However, disputes between competitive pay telephone providers and various LECs have developed because of 1+ calls to Caribbean nations within area code 809. The LECs have explained that the tariffed international call blocking option really meant that only 011 calls were blocked and that non-domestic termination points within the North American Numbering Plan were not and could not be blocked unless all 1+NPA calls were blocked, which would preclude the completion of domestic sent-paid 1+ calls. Thus, 809 area code fraud has continued to affect FPTA members in Florida. Clearly, LEC screening and blocking services need to be developed and tailored to continuing and new fraud problems.

In total, the Florida experience suggests that LEC operator screening and blocking services can be a valuable tool in the effort to prevent toll fraud, but it is not a complete solution. Still, how LEC screening and blocking services are bundled or unbundled and the ability and desire of the LECs to develop and implement new services is a major component to the toll fraud prevention solution. As for the proposed rule, it is concerned with what occurs after the screening and blocking has failed.

5. Other Services Can Help Reduce Payphone Toll Fraud.

As telecommunications technology and services continue to evolve and mature, all industry participants should continue to work to anticipate and respond to payphone toll fraud problems. In terms of other services available to reduce fraud, the FPTA is

aware that some of the IXC's are beginning to introduce their own specialized screening and blocking services for pay telephones presubscribed on a 1+ basis to that IXC or for which the IXC is the designated OSP. For example, the FPTA has been advised that some IXC's provide an international call blocking service for competitive pay telephones that includes calls to the 809 area code. Unfortunately, such services are unavailable to stop calls billed through IXC's that are not presubscribed to the payphones. The FCC and state regulatory commissions should encourage participating carriers to continue to develop additional, necessary fraud prevention and detection services.

6. The Proposed Payphone Toll Fraud Rule is the Best Solution to Apportion Costs.

The keys to payphone toll fraud prevention are: (1) the payphone instrument should be programmed to block fraudulent calls, (2) the access line, protector block, and station wire should be placed in a secured manner, (3) the LECs should be required to provide, and the competitive pay telephone providers should be required to purchase, the applicable screening and blocking features, and (4) the 1+ and O+/O- carriers should make available their own screening and blocking services. These efforts should significantly work to preclude payphone toll fraud.

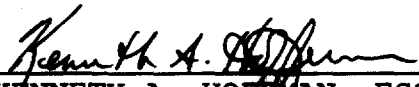
However, in the event payphone toll fraud does occur, it is critical to apportion liability coincident with responsibility. In such situations, the Florida rule should be adopted by the FCC as it provides a uniform, single rule applicable to the problem. Reliance upon individual carrier tariffs could result in non-

uniform language and, unintentionally, inconsistent requirements. This is a matter of national importance that requires a single policy, which would be implemented by the FCC's adoption of the Florida rule.

IV. CONCLUSION

All industry participants should continue their efforts to develop equipment and services to prevent payphone fraud. However, once such payphone fraud occurs, the proposed Florida rule provides a fair and reasonable assignment of liability on the basis of underlying responsibility. Accordingly, the Florida Pay Telephone Association strongly recommends that the FCC adopt the Florida fraud rule without any further changes.

Respectfully submitted,



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I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Florida Pay Telephone Association, Inc. in 93-TOLL FRAUD02 has been sent by Hand Delivery (*) and/or U.S. Mail on this January 14, 1994 to the following parties of record:

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